



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169802

PRELIMINARY RECITALS

Pursuant to a petition filed November 02, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on December 03, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly seeks to recover a \$1,100.06 overpayment of BadgerCare+ benefits for the period of December 1, 2014 through March 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On October 14, 2015, the agency sent the Petitioner a Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notice, claim number [REDACTED], indicating she was overpaid \$1,100.06 in benefits for the period of December 1, 2014 to March 31, 2015. (Exhibit 9)
3. The agency did not include an overpayment worksheet with its overpayment notice. (Exhibit 9)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 2, 2015. (Exhibit 1)
5. During the time in question, Petitioner's household size was 2; she was married in July 2014. (Exhibit 12)

DISCUSSION

An "overpayment" occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of application regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Per BEH+ §28.3, overpayments may not be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

In the case at hand, the agency did not attach an overpayment worksheet to its overpayment notice, explaining how it calculated the Petitioner's income and determined the overpayment. (See Exhibit 9) However, it asserts that the Petitioner failed to report income and was over the income limit for a household of one person for the months of December 2014 through March 31, 2015. (See Exhibit 2; Testimony of Ms. Mayer)

During the overpayment period, the Petitioner's household consisted of two people, the Petitioner and her husband. As such, the agency's calculation of the overpayment is incorrect, since it based its overpayment determination on the income limit for a household of one person.

The agency argues that it should not have to calculate an overpayment based upon a household of two people, because the Petitioner did not report the marriage. The agency's position makes no sense. If Petitioner failed to report her husband in the household and he earned income that caused the household to go over the income limit, his income would have to be counted, per *BEH* §§ 16.1 and 28.4.1.

The agency will have to verify and include income from Petitioner's husband and determine whether the household was over the income limit for a household of two individuals.

If Petitioner disagrees with that determination, she must file a NEW appeal.

CONCLUSIONS OF LAW

The agency incorrectly seeks to recover a \$1,100.06 overpayment of BadgerCare+ benefits for the period of December 1, 2014 through March 31, 2015.

THEREFORE, it is

ORDERED

The agency shall rescind overpayment claim number [REDACTED], which incorrectly alleges an overpayment of \$1,100.06 for the period of December 1, 2014 to March 31, 2015. The agency shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of January, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 6, 2016.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability